



9110-04-P

DEPARTMENT OF HOMELAND SECURITY

Coast Guard

33 CFR Part 117

[Docket No. USCG-2011-0937]

RIN 1625-AA09

Drawbridge Operation Regulation; Black River, La Crosse, WI

AGENCY: Coast Guard, DHS.

ACTION: Final Rule.

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SUMMARY: The Coast Guard is modifying the operating schedule that governs the Canadian Pacific Railroad Drawbridge across the Black River at Mile 1.0 near La Crosse, Wisconsin. The drawspan shall immediately open upon demand once the vessel requiring an opening establishes contact with the remote operator located in Minneapolis, Minnesota, via radiotelephone on VHF-FM Channel 16, or by standard telephone calling (507) 895-6087. The remote drawbridge operator will ensure the drawspan can safely be opened, immediately move it to the open to navigation position, and then maintain constant contact with the vessel until it has completely transited the bridge.

DATES: This rule is effective [INSERT DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: Comments and related materials received from the public, as well as documents mentioned in this preamble as

being available in the docket, are part of docket USCG-2011-0937 and are available online by going to <http://www.regulations.gov>, inserting USCG-2011-0937 in the "Keyword" box, and then clicking "Search." This material is also available for inspection or copying at the Docket Management Facility (M-30), U.S. Department of Transportation, West Building Ground Floor, Room W12-140, 1200 New Jersey Avenue SE, Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: If you have questions on this rule, call or e-mail Eric A. Washburn, Bridge Administrator, Western Rivers, Coast Guard; telephone 314-269-2378, e-mail [Eric.Washburn@uscg.mil](mailto:Eric.Washburn@uscg.mil). If you have questions on viewing the docket, call Renee V. Wright, Program Manager, Docket Operations, telephone 202-366-9826.

SUPPLEMENTARY INFORMATION:

A. Regulatory History and Information

On November 14, 2011, we published a notice of proposed rulemaking (NPRM) entitled Drawbridge Operation Regulation; Black River, La Crosse, Wisconsin, in the Federal Register (76 FR 70384). We received no comments on the rule. A public meeting was held on November 29, 2011, in La Crosse, Wisconsin, at which no objections were presented against the rule. On June 15, 2012, through July 15, 2012, we

authorized a test deviation period to gauge the effects of the rule on the waterway users. No objections were presented during or after the test deviation period.

B. Basis and Purpose

The Black River is a navigable waterway of the United States from its mouth at mile 698.2 of the Upper Mississippi River, to approximately mile 3.0. Heavy recreational vessel traffic can be found along the length of the river and commercial navigation primarily operates up to mile 1.4. In this reach commercial barge operations handle cement, chemical, and fuel products at various loading terminals. A large recreational vessel manufacturer and marine repair facility are also located within this stretch of river.

In order to reduce wait time for requested drawbridge openings, while also reducing operating costs, Canadian Pacific requested a change to operation of this drawbridge. Canadian Pacific proposed that the drawbridge be operated via a procedure where vessels contact a remote drawbridge operator through VHF-FM Channel 16 or telephone (507) 895-6087 and request an opening. The remote operator would then ensure that no trains are in the block and then open the drawspan as appropriate. Once opened to navigation, the drawbridge would remain raised until the remote operator verifies safe passage of the vessel by means of radio or

telephone confirmation with the passing vessel, video monitoring, and boat detection equipment.

C. Discussion of Comments, Changes and the Final Rule

The Coast Guard provided a comment period of 60 days in which no comments were received.

D. Regulatory Analyses

We developed this rule after considering numerous statutes and executive orders related to rulemaking. Below we summarize our analyses based on a number of these statutes or executive orders.

1. Regulatory Planning and Review

This rule is not a significant regulatory action under section 3(f) of Executive Order 12866, Regulatory Planning and Review, as supplemented by Executive Order 13563, Improving Regulation and Regulatory Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of order 12866 or under section 1 of Executive Order 13563. The Office of Management and Budget has not reviewed it under that Order.

The impact of this regulatory action upon the current regulatory text is that it communicates a change in the procedure to open the drawbridge. Specifically, this action changes the regulatory text from "The draw of the CP Rail railroad bridge, mile 1.0 at La Crosse, shall open on signal if at least two hours notice is given" to "The drawspan of

the Canadian Pacific Railroad Bridge, mile 1.0, at La Crosse, Wisconsin is operated by a remote operator located at the Canadian Pacific Railway Minneapolis Operations Center, in Minneapolis, Minnesota. Drawspan shall open upon demand by contacting remote operator via VHF-FM Channel 16 or telephone (507) 895-6087."

## 2. Impact on Small Entities

The Regulatory Flexibility Act of 1980 (RFA), 5 U.S.C. 601-612, as amended, requires federal agencies to consider the potential impact of regulations on small entities during rulemaking. The term "small entities" comprises small businesses, not-for-profit organizations that are independently owned and operated and are not dominant in their fields, and governmental jurisdictions with populations of less than 50,000. The Coast Guard received no comments from the Small Business Administration on this rule. The Coast Guard certifies under 5 U.S.C. 605(b) that this rule would not have a significant economic impact on a substantial number of small entities.

This action is based on the expected reduction in wait time for drawspan openings and will not impact the local businesses, organizations, or government entities in the community.

## 3. Assistance for Small Entities

Under section 213(a) of the Small Business Regulatory

Enforcement Fairness Act of 1996 (Public Law 104-121), we want to assist small entities in understanding this rule. If the rule would affect your small business, organization, or governmental jurisdiction and you have questions concerning its provisions or options for compliance, please contact the person listed in the FOR FURTHER INFORMATION CONTACT, above.

Small businesses may send comments on the actions of Federal employees who enforce, or otherwise determine compliance with, Federal regulations to the Small Business and Agriculture Regulatory Enforcement Ombudsman and the Regional Small Business Regulatory Fairness Boards. The Ombudsman evaluates these actions annually and rates each agency's responsiveness to small business. If you wish to comment on actions by employees of the Coast Guard, call 1-888-REG-FAIR (1-888-734-3247). The Coast Guard will not retaliate against small entities that question or complain about this rule or any policy or action of the Coast Guard.

#### 4. Collection of Information

This rule calls for no new collection of information under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520.).

#### 5. Federalism

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct

effect on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. We have analyzed this rule under that Order and have determined that it does not have implications for federalism.

#### 6. Protest Activities

The Coast Guard respects the First Amendment rights of protesters. Protesters are asked to contact the person listed in the "For Further Information Contact" section to coordinate protest activities so that your message can be received without jeopardizing the safety or security of people, places or vessels.

#### 7. Unfunded Mandates Reform Act

The Unfunded Mandates Reform Act of 1995 (2 U.S.C. 1531-1538) requires Federal agencies to assess the effects of their discretionary regulatory actions. In particular, the Act addresses actions that may result in the expenditure by a State, local, or tribal government, in the aggregate, or by the private sector of \$100,000,000 (adjusted for inflation) or more in any one year. Though this rule will not result in such an expenditure, we do discuss the effects of this rule elsewhere in this preamble.

#### 8. Taking of Private Property

This rule will not cause a taking of private property or otherwise have taking implications under Executive Order 12630, Governmental Actions and Interference with Constitutionally Protected Property Rights.

9. Civil Justice Reform

This rule meets applicable standards in sections 3(a) and 3(b)(2) of Executive Order 12988, Civil Justice Reform, to minimize litigation, eliminate ambiguity, and reduce burden. The Coast Guard provided a comment period of 60 days in which no comments were received.

10. Protection of Children

We have analyzed this rule under Executive Order 13045, Protection of Children from Environmental Health Risks and Safety Risks. This rule is not an economically significant rule and would not create an environmental risk to health or risk to safety that might disproportionately affect children. The Coast Guard provided a comment period of 60 days in which no comments were received.

11. Indian Tribal Governments

This rule does not have tribal implications under Executive Order 13175, Consultation and Coordination with Indian Tribal Governments, because it would not have a substantial direct effect on one or more Indian tribes, on the relationship between the Federal Government and Indian tribes, or on the distribution of power and responsibilities



between the Federal Government and Indian tribes. The Coast Guard provided a comment period of 60 days in which no comments were received.

#### 12. Energy Effects

We have analyzed this rule under Executive Order 13211, Actions Concerning Regulations That Significantly Affect Energy Supply, Distribution, or Use. We have determined that it is not a "significant energy action" under that order because it is not a "significant regulatory action" under Executive Order 12866 and is not likely to have a significant adverse effect on the supply, distribution, or use of energy. The Administrator of the Office of Information and Regulatory Affairs has not designated it as a significant energy action. Therefore, it does not require a Statement of Energy Effects under Executive Order 13211. The Coast Guard provided a comment period of 60 days in which no comments were received.

#### 13. Technical Standards

This rule does not use technical standards. Therefore, we did not consider the use of voluntary consensus standards. The Coast Guard provided a comment period of 60 days in which no comments were received.

#### 14. Environment

We have analyzed this rule under Department of Homeland Security Management Directive 023-01, and Commandant

Instruction M16475.1D, which guides the Coast Guard in complying with the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321-4370f), and have concluded that this action is one of a category of actions which do not individually or cumulatively have a significant effect on the human environment. This rule is categorically excluded, under figure 2-1, paragraph (32)(e), of the Instruction.

Under figure 2-1, paragraph (32)(e), of the Instruction, an environmental analysis checklist and a categorical exclusion determination are not required for this rule.

#### List of Subjects in 33 CFR Part 117

Bridges.

For the reasons discussed in the preamble, the Coast Guard amends 33 CFR part 117 as follows:

#### PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 33 CFR 1.05-1; Department of Homeland Security Delegation No. 0170.1.

2. Revise § 117.1081 to read as follows:

#### § 117.1081 Black River.

The drawspan of the Canadian Pacific Railroad Bridge, mile 1.0, at La Crosse, Wisconsin is operated by remote operator located at the Canadian Pacific Railway Minneapolis

Operations Center, in Minneapolis, Minnesota. Drawspan shall open upon demand by contacting remote operator via VHF-FM Channel 16 or telephone (507) 895-6087.

Dated: October 31, 2012

Roy A. Nash, Rear Admiral  
Commander, U.S. Coast Guard  
Eighth Coast Guard District

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